for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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DANCES WITH WOLVES: Knowing the Ethical Rules for Dealing With the Media

by Christopher Johns

A jury consists of twelve persons chosen to decide who has the better lawyer.

~ ~ Robert Frost (Attributed)

"All I know is what I see in the papers," Will Rogers joked. Today the media's role in daily life is--well, *Zeitgeist*. It touches everyone--potential jurors, politicians, judges, and public opinion. And public opinion itself forms the courtroom environment. Understanding the media and the ethical rules that govern attorney conduct when dealing with the press is essential for the modern criminal law advocate--whether private or publicly employed.

"The lawyer's role as spokesperson may be equally important to the outcome of a case as the skills of an advocate in the courtroom," writes Robert Shapiro in the January 1993 *Champion* magazine. Although as public defenders the vast majority of our cases never involve any form of media coverage, occasionally we are thrust into the limelight. When that moment comes, like all aspects of being a criminal law practitioner, doing the best job favors the most prepared. And you can't be prepared unless you know the game's rules.

If you are contacted by the media and are unprepared, not only may the client lose a valuable opportunity to even the playing field that favors the government, but a potential tactical advantage may be lost that could have made the difference in the client's case. Whether we like it or not, being a skilled-in-public-relations pitchperson is a necessary element of effective client advocacy these days.

Whether or not the circumstances are appropriate to comment on a client's circumstances is case specific. It's obviously a matter for calculated judgment. What a criminal defense lawyer must know is what he may and may not say to avoid violating ethical rules.

Brief Encounter

Most practitioners are aware by now that in 1991 the U.S. Supreme Court decided *Gentile v. State Bar of Nevada*, upholding the right of the state to regulate attorney speech on pending cases. According to *Gentile*, where there is a substantial likelihood that attorney statements may prejudice an adjudicative proceeding, speech may be regulated. In other words, a lawyer's First Amendment rights aren't absolute.

The *Gentile* case involved an alleged violation of Nevada's version of ABA Model Rule 3.6. Nevada's rule is virtually identical to Arizona's version of ER 3.6.

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Dominick Gentile is a respected Las Vegas criminal defense lawyer. His client was accused of stealing dope from a locker facility used by the police (in actuality, police officers were the ones stealing the drugs). Prosecutors held a news conference where they trashed Gentile's client. The next day Gentile held his own press conference after carefully reviewing Nevada's version of ER 3.6.

Basically, what Gentile did was rely on the so-called *safe harbor* provision of ER 3.6. That sub-section says that despite all the rules limiting a lawyer's speech, if the speech falls into specific categories you may say it. Prosecutors and criminal defense lawyers (as well as civil practitioners) do it all the time.

You may talk about the general nature of the defense (my client wasn't there), information in the public record (discuss or provide copy of indictment), scheduling, requests for assistance to obtain information (how come defense lawyers never use this one?), and other specifics about the defendant's arrest, etc.

In other words, a lawyer's First Amendment rights aren't absolute.

Under the old version, at least, you're busted if you discuss a witness's specific testimony (when's the last time you heard of an Arizona lawyer charged by the State Bar on this one?), talk about contents of a confession, reveal the results of tests or express an opinion as to guilt or innocence!!!

What the Nevada Bar argued was that the "safe harbor" provision didn't apply as long as the statements might prejudice the proceedings. Or as Justice Kennedy writing for the Court held, the "notwithstanding" Rule language misled Gentile into thinking he could comment as long as the comments were limited to the enumerated exceptions.

The "New" Rule

Last summer the ABA responded to the *Gentile* decision by rewriting ER 3.6. And in all likelihood it's going to end up applicable in Arizona, although there is no news from the State Bar yet as to when.

Here's what you probably need to know:

- The rule amendment makes it clear that it only applies to lawyers involved in the case or investigation (the present rule is a little unclear). In other words, you may say whatever you want about OJ's case and still be ethical.

- Now it's more straightforwardly provided that you may comment on the stuff in the safe harbor provision.

- Most importantly, a new section is added that allows a lawyer to make a statement that *"a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity."*

In other words, if the prosecutor trashes your client, e.g., decides to tell the media he has AIDS or belongs to the CRIPS, you've got the right to make a response where silence could very well prejudice your client. It's kind of the "invited response" rule.

Of course, the caveat here might still be if the court has ordered otherwise (in a constitutional manner). The changed rule is consistent with the current trend among criminal defense lawyers to use the media as one more tool to protect and to promote the client's case, especially in the high profile case where the government will undoubtedly make it public for their own benefit.

Before you amble down to the microphone, here are a few other *caveats* you'll want to consider before you pull a "Shapiro":

- If you work in a public office, you'll want to consider any written policies or rules, e.g., in

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for The Defense

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the Maricopa County Public Defender's Office, lawyers may comment on their own case and individual client, but should leave "public policy" pronouncements to the public defender or his assistant.

- Read the rule and make sure you mention it in your spiel, e.g., the ethical rules provide that a lawyer may or may not comment on this or that.

- Rely on public documents. It's harder for reporters to get it wrong if it's written. If everything you need to say is in a written motion that's been filed (and not under seal), let it speak for you as much as possible.

- Make your remarks brief.

- Know the ground rules. Don't assume something is "off the record." Remember, as well, that "off the record" is different from just not having something "attributed." There are plenty of instances when you might want to "ethically" give information and just not have it attributed. Most reporters are professionals and are in this business, just like you, for the long haul.

. . . if the prosecutor trashes your client, . . . you've got the right to make a response where silence could very well prejudice your client.

- Timing is everything.

- All comments should be calculated only for the benefit of your client, not your own.

- Should a crisis emerge and you need the new Rule, I can provide a copy.

Remember, understanding the media is just one more collateral consequence and skill that must be mastered for the criminal law practitioner. It is neither good nor evil, necessary or unnecessary, it is just part of the landscape. Ω

Round Up The Usual Suspects*

*Formerly "Nobody Said It Would Be Easy." And before that, "Practice Tips."

Batson Developments: Religion & Stacking

There will we serve with awe as in the days of old.
~ ~ Old Hebrew Prayer

The absence of black jurors in the Simi Valley trial of police officers who beat Rodney King clearly shows the tactical advantage of the right jury. Conversely, the Scottsboro trials (1931-37) exposed the Southern tradition of excluding blacks from juries, particularly when the accused was of the same race.

Batson marks an attempt to eliminate racial discrimination in jury selection. And *Batson's* logic is now applicable to all state actors. *Georgia v. McCollum*, 112 S. Ct. 2348 (1992). The sex of jurors is also a basis for *Batson* protection. *J.E.B. v. Alabama ex rel. T.B.*, 114 S. Ct. 1419 (1994).

So what's next? If you guessed whether you are left- or right-handed, you're wrong. If you guessed religion, you're right--at least according to the Texas Court of Criminal Appeals. The court's opinion holds that the Equal Protection Clause bars exercise of "peremptories" on the basis of a classification that must, but can't, pass heightened scrutiny. You may not base "peremptories" on the basis of a venireperson's religion.

Why is this case important to consider for the *Batson* section of your trial notebook? As mentioned, *Batson* applies now to both prosecutors *and* defense lawyers. Originally, *Batson* issues were so obvious that Mr. McGoo couldn't help but see them. Not necessarily so now when the case law has not only become more complex, but the strategic gamesmanship is almost Kafkaesque.

In *Texas Ct. Crim. App.* (No. 1114-93, decided December 14, 1994), the Latino defendant was charged with sexual assault. The prosecutor struck two black veniremembers. Defense counsel objected and the prosecutor claimed that there were non-racial reasons, including the fact that the prospective jurors belonged to the Pentecostal religion. Trial court denied defense counsel's argument that basing the "peremptories" on religion violated the Fourteenth Amendment.

Putting aside Gilbert K. Chesterton's quip, "It is the test of a good religion whether you can joke about it,"

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the Texas appellate court had no problem with analysis that subjected the government's action to a "heightened equal protection scrutiny." Pretty standard stuff. What's more interesting, however, is the dissent.

The dissent's perspective is that the prosecutor did indeed give sufficient reason to justify the strike. The prosecutor had argued that in his experience Pentecostals often had difficulty assessing punishment. Plus, the prosecutor noted that there were non-religious reasons for the strikes (the prospective jurors both had relatives who had been in trouble with the law). In essence, the dissenting judge argues that *Batson* has gone too far and that it ought to be abandoned. Judge Meyer writes:

> *Even the stereotypes upon which peremptory strikes are based are different from the "officially disapproved" stereotypes set out in many of the cases upon which Batson and J.E.B. apply. The primary evil identified in these cases was classifications, which were statutory, that usually served "to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women and whites and blacks.*

The dissent further argues that "I am not persuaded that the Constitution forbids peremptory removal of prospective jurors on account of their religion. The distinction between religion on one hand, and race and sex on the other, is that religion is typified by an official creed. The only significant matter that members of a religious faith generally have in common is their belief in *certain principles, doctrines, or rules* [emphasis added]."

To Judge Meyer's way of thinking, holding that a venireperson may not be dumped from the panel is the equivalent of saying you may not be stricken for your beliefs.

So What's The Point?

Batson remains the hot trial (for tactical advantage) and appellate (hopefully someone screwed up) issue in criminal cases. We're not talking cyberspace here to know that if you're thinking ahead you may make some good law or at least help your client down the road. That's exactly what Jay Andrews did when he was with our office and foresaw that *Batson* didn't necessarily have to correlate to your client's race. Some brainstorming might explore these issues:

- Is religion covered by Arizona case law and could a person's religious beliefs be pertinent to a case (death penalty, child molestation, drug use)?

- If religion is the adherence to "certain principles, doctrines or rules," what is political affiliation?

- What is economic status?

- What if venirepersons are struck because they have names that identify them with one religious group, e.g., Catholic? (According to a recent article in the *Boston Globe*, a Catholic priest's conviction was overturned because the prosecutor used "peremptories" to strike three jurors with Irish-sounding names and therefore presumably Catholic!)

What about stacking a jury through *Batson?* Arguably, that's what Robert Shapiro and Johnnie Cochran have been able to do in a little-known California case (*People v. "The Juice"*). Granted, they actually have minorities who live in L.A., but you might want to tuck this away for future reference.

In *People v. Stiff*, (great name for a case!), N.Y. Sup. Ct., App. Div. 2d (No. 91-10250, decided on December 12, 1994), New York held that a criminal defendant may not use his peremptory challenges to exclude potential jurors because they do *not* belong to a particular racial group. Say what?

In Mr. Stiff's (who is African-American) case, defense counsel used five peremptory challenges to exclude a white male, an Asian male, a Latino male, a white female, and a Latino female. Guess what was left? An all-black jury panel (I haven't seen that many African-American jurors in my whole time in the public defender office collectively--let alone on one jury?). Hmm . . .

Of course, defense counsel provided race-neutral reasons for the challenges.

The court wrote, "We find no support for the argument that it is acceptable for either party to use peremptory challenges in an attempt to impanel a jury of a single race."

* * * * *

If you're looking for research on potential *Batson* issues and you don't have the time to discuss it with our office's guru on the subject, Mara Siegel, here's a short list of articles:

- "Challenging the Challenge: The Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges," *Cornell Law Review* 76 (1990).

- "Note: Affirmative Selection: A New Response to Peremptory Challenge Abuse," *Stanford Law Review* 38 (1986).

- For a history of the peremptory challenge see Colbert, "Challenging the Challenge," pp. 9-13; *Swain v. Alabama*, 380 U.S. 202 (1965).

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Legislature Poised to Pass Legislation On Competence to Stand Trial

"All crime is a kind of disease and should be treated as such," remarked Mahatma Gandhi, himself a lawyer no stranger to trying criminal cases. When it comes to incompetence to stand trial, however, a much more narrow view has always been taken by the government.

An *ad hoc* committee, formed last year and chaired by Jack Potts, has undertaken an effort to get legislation passed revamping how clients found incompetent to stand trial will be treated. Ostensibly undertaken because Arizona ranks slightly higher than the national average in finding folks incompetent (read saving money), the committee is particularly concerned with developmentally disabled clients who are in the revolving door of the system. According to Dr. Potts, a high percentage of these offenders are child molesters and other dangerous offenders who aren't getting treatment. Dr. Potts also says that because of the lack of guidelines and multiple providers performing the competency examinations, the criteria lacks uniformity and "consistency." Dr. Potts and other mental health experts want to see a smaller group of well-trained, "certified" practitioners to evaluate competency. Early on, in fact, Dr. Potts insisted over fierce objection from our Office that there be only one mental health expert used in competency determination--effectively "gutting" the adversarial process in exams.

. . . proposed legislation is aimed at providing more stringent control over clients found incompetent . . .

Make no mistake about it, however, the proposed legislation is aimed at providing more stringent control over clients found incompetent, similar to the "guilty except insane and accompanying psychiatric review board" legislation passed in 1993.

Basically, here are the salient points: as before, both parties may initiate the exam; however, some procedural rules have been modified. The court may appoint an expert as well as "additional experts and may order the defendant to submit to physical, neurological or psychological" tests. The standard is still whether "reasonable grounds" exist.

To preclude a practice that sometimes now occurs, our clients may not be taken into custody for purposes of the examination unless specific factors are determined. For example, the client won't cooperate or is a danger to self or others.

By law, the privilege "against self-incrimination applies to any examination that is ordered by the court." Although strangely, the bill provides that any incriminating statement may not be used at trial unless the client consents.

Once an examination is done, there is a hearing. Like before, the court may set a time period for regaining competency. Now, however, the period may be for up to 21 months. Restoration may include mandatory treatment. And a so-called "clinical liaison" is created to monitor treatment.

Hearing Held

When there is no substantial probability of regaining competency, the client may be "remanded" to the custody of the Department of Health Services, be civilly committed or have the charges dismissed. If charges are sought to be dismissed, an adversarial hearing is held (without a jury) where the burden for guilt and innocence seems to be somehow jointly shared! If the client is acquitted at the so-called discharge hearing, the prosecutor may still seek civil or DHS commitment. If not acquitted, the client stays in for up to another 21 months--except that a schedule of length of commitment is established according to the offense's seriousness. Moreover, if the client remains incompetent and may be committed per Title 36 or is *a threat to public safety*, the client may end up under the jurisdiction of the psychiatric security review board for up to the maximum sentence that could have been imposed.

Commenting on Victim's Refusal to Testify

Vengeance has no foresight.

~ ~Napoleon Bonaparte

May defense counsel cross-exam and comment on the alleged victim's failure or refusal to participate in a pretrial interview? Despite the fact that some county attorneys file motions attempting to prevent it, the answer is "YES." If it ain't, it should be.

Why? Hidden within the nuances of Arizona's Victims' Rights Implementation Act is subsection E of A.R.S. 13-4433. It provides:

> *If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona constitution.*
> (A.R.S. 13-4433(E).

Oh, I suppose you could argue that this provision means in closing "argument," but it's like arguing that the mob didn't whack Jimmy Hoffa. It's kind of a common

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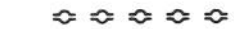
sense thing. Obviously, by inclusion of this provision in the statutory victims' rights scheme, the legislature acknowledges what instinct tells every criminal defense lawyer: Thou shalt not unnecessarily restrict the Sixth Amendment Right to Confrontation. Plus, as the old-timers are fond of saying, the cases are legion on just how extensive cross-examination should be permitted.

Why is it a good bet you may cross on it? Is it relevant? Sure. It goes to credibility and perhaps motive. If the victim is telling the truth, why wouldn't they want to interview? By the way, while you're exploring that area on the stand, don't forget that all those little conversations between the victim and the prosecutor *aren't privileged.* They're fair game, especially since they may involve sand-papering the alleged victim, etc.

I haven't seen the motion that county attorneys are filing on this (although every month I get several calls on this issue). My guess is that it probably slobbers on about how our clients have the right not to say anything and therefore alleged victims shouldn't. Wrong. Alleged victims aren't on trial, and their life or liberty isn't at stake.

So, if this issue comes up, there's good authority to rebut the government's motion.

--CJ Ω



Opinion Says Two PD Offices May Be Created

Two Offices 'Technically' Permissible

"[S]plitting . . . the current legal staff of the Public Defender's office is technically permissible," according to a legal opinion prepared for County Administrative Officer David R. Smith by Dean M. Wolcott of the Maricopa County Attorney's Office. The opinion, sought by Mr. Smith, also notes that ethical considerations are important in determining cases to be assigned to the second office.

Wolcott also said in the opinion that each office would have to be headed by separate attorneys who meet the public defender statutory qualifications. The offices, according to the opinion, "must necessarily be separate in operation."

Administrator Smith also sought to determine whether certain "purely administrative" functions may be shared. According to Wolcott's legal opinion, "the County could provide a common administrative staff for such matters as payroll, travel, procurement, and personnel matters, so long as these personnel were not privy to client confidences."

Current Administration Wants Ethical Guidelines Followed

The County Attorney's Office's opinion, however, does not refer to State Bar Opinion 93-06. That opinion, sought by Dean Trebesch, states:

> *" [I]t is possible the County could accomplish its objective by establishing a separate office, with no ties to the Public Defender, to handle conflict cases. Such an office would not run afoul of ER 1.10 if it was sufficiently separate, both in operation and management, to constitute a separate 'firm' within the meaning of ER 1.10."*

According to a memorandum by Dean Trebesch, there are still concerns about such issues as travel since they often relate to confidences. Likewise, personnel files and obviously client files pose similar problems. Shared computer services and other administrative issues could also pose significant problems that need to be resolved. As of this publication's deadline, the county's time line is still to create a second office by March 1st.

State Bar Ethics Opinions 87-13, 89-04, 89-098 and 93-06 also address this issue.

Decision to Create Another Office Based on Management & Budget Analysis

The decision to create a second office was largely based on an "Indigent Defense Cost Avoidance Plan" developed by the county. According to the county's analysis, indigent defense costs more than "doubled from FY 1988-89 through FY 1993-94. Projections by our office, as well as the Office of Court Appointed Counsel (OCAC), projected that combined expenditures could exceed $3.6 million over FY 1993-94--roughly a 7% increase.

According to the Management & Budget Office, the strategies open to the county to maintain or reduce costs include:

- Implementing more stringent screening processes to determine indigence and collect a $50.00 "registration fee."

- Create a second public defender office "with existing staff to shift a greater portion of cases to public defenders."

- Approve ten more major felony contracts for six months for OCAC.

Unfortunately, the analysis fails to consider that case filings and the ability of lawyers to process cases are largely dependent on agencies outside the public defender office. More police officers hired by the City of Phoenix,

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and even further funds for law enforcement as the result of the Crime Bill, may also impact caseloads. According to the Contract with America, in fact, Republicans plan to shift even more money into law enforcement and prisons and away from treatment programs. Some estimates are by as much as $5 billion.

Likewise, filings by prosecutorial agencies--including the County and the Attorney General's Offices--significantly impact workload and caseload.

The report also notes that the cost per case for our office for last fiscal year actually declined by approximately $30.00 and was almost $300 less than the typical amount expended by OCAC.

National Trend

According to earlier reports delivered to the county by national expert Robert Spangenberg, second offices are a cost-cutting trend nationally. Many jurisdictions, including San Diego County, Los Angeles County and Pima County, have successfully reduced indigent defense costs by creating second offices. Orange County, California has recently, according to the report, "started a crash program to start a second and third public defender offices to save $3.7 million this year."

Stay tuned. Ω

December Jury Trials

November 28

Kevin Burns: Client charged with two counts of armed robbery. Investigator P. Kasieta. Trial before Judge Hertzberg ended December 04. Defendant found **not guilty**. Prosecutor Yares.

Peter Claussen: Client charged with four counts of child molestation. Investigator A. Velasquez. Trial before Judge D'Angelo ended December 15. Defendant found guilty. Prosecutor J. Garcia.

November 29

Douglas Harmon: Client charged with aggravated assault. Investigator H. Jarrett. Trial before Judge Barker ended December 05. Defendant found guilty. Prosecutor W. Baker.

Joseph Stazzone: Client charged with kidnapping and two counts of aggravated assault. Trial before Judge Schwartz ended December 07. Defendant found guilty of aggravated assaults; **not guilty** of kidnapping--guilty of lesser included unlawful imprisonment. Prosecutor D. Patton.

December 01

Nancy Johnson: Client charged with shoplifting (with priors). Trial before Judge Brown ended December 02. Defendant found guilty. Prosecutor M. Daiza.

Valarie Shears: Client charged with possession of narcotic drugs and misconduct involving a weapon (with priors). Trial before Judge Dougherty ended December 05 with a hung jury. Prosecutor J. Bernstein.

December 03

Phil Vavalides: Client charged with possession of prohibited weapon. Trial before Judge Trombino ended December 09. Defendant found guilty. Prosecutor Shifman (A.G.'s Office).

December 05

Michael Hruby: Client charged with aggravated DUI (with priors). Investigator C. Yarbrough. Trial before Judge Chornenky ended December 05 with a mistrial. Prosecutor Doran.

Charles Vogel: Client charged with possession of dangerous drugs and possession of drug paraphernalia. Investigator J. Allard. Trial before Judge Rogers ended December 08. Defendant found **not guilty**. Prosecutor Stuart.

December 06

Robert Billar and Daniel Carrion: Client charged with first degree murder. Investigator M. Fusselman. Trial before Judge O'Melia ended December 15 with a hung jury (10 to 2 in favor of the defense). Prosecutor B. Clayton.

James Cleary: Client charged with attempted murder in the second degree and aggravated assault (dangerous). Investigator N. Jones. Trial before Judge Ryan ended December 06 with a mistrial. Prosecutor Stalzer.

Renee Ducharme: Client charged with aggravated assault (dangerous and with priors). Investigator R. Gissel. Trial before Judge Dougherty ended December 08. Defendant found guilty. Prosecutor Palmer.

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December 07

James Cleary: Client charged with attempted murder in the second degree and aggravated assault (dangerous). Investigator N. Jones. Trial before Judge Ryan ended December 12. Defendant found guilty. Prosecutor Stalzer.

December 08

Slade Lawson: Client charged with aggravated DUI. Trial before Judge Kaufman ended December 13. Defendant found guilty. Prosecutor P. Gann.

December 12

Kevin Burns: Client charged with armed robbery. Investigator P. Kasieta. Trial before Judge DeLeon ended December 14. Defendant found guilty. Prosecutor Yares.

Susan Corey: Client charged with aggravated assault (dangerous). Investigator N. Jones. Trial before Judge Anderson ended December 21. Defendant found guilty. Prosecutor Clark.

Elizabeth Feldman: Client charged with aggravated assault (dangerous). Trial before Judge Trombino ended December 14. Defendant found guilty. Prosecutor V. Harris.

Thomas Kibler: Client charged with kidnapping, burglary, theft, criminal trespass, and three counts of sexual assault. Trial before Judge Seidel ended December 20. Defendant found guilty. Prosecutor J. Beatty.

Raymond Vaca: Client charged with possession of narcotic drugs for sale and possession of drug paraphernalia. Trial before Judge Portley ended December 19. Defendant found guilty. Prosecutor J. Martinez.

December 14

Catherine Hughes: Client charged with theft (with prior). Investigator M. Fusselman. Trial before Judge Brown ended December 15. Defendant found guilty. Prosecutor V. Harris.

December 15

Larry Grant: Client charged with theft. Trial before Judge D'Angelo ended December 19. Defendant found guilty. Prosecutor D. Cunanan.

James Haas: Client charged with possession of dangerous drugs (with priors and while on parole). Investigator D. Beever. Trial before Judge Bolton ended December 21. Defendant found guilty. Prosecutor Mann.

December 19

Michael Hruby: Client charged with aggravated DUI (with priors). Trial before Judge Brown ended December 22. Defendant found **not guilty** of aggravated DUI (with priors); guilty of lesser included misdemeanor. Prosecutor Doran.

Editor's Note:
The following are corrections and/or additions to the trial results published in last month's issue:

October 12, 1994 -- trial listed for Elizabeth Langford actually was handled by Gregory Parzych.

November 15, 1994 -- Roland Steinle's trial work was not listed. Client charged with two counts of sexual conduct with a minor. Trial before Judge Portley ended November 17. Defendant found guilty. Prosecutor R. Campos. Ω

■ PSALM 15 ■

Lord, who can be trusted
with power, and who
may act in your place?
Those with a passion for
justice, who speak the
truth from their hearts;
who have let go of selfish
interests and grown
beyond their own lives;
who see the wretched as
their family and the poor
as their flesh and blood.
They alone are impartial
and worthy of the
people's trust.
Their compassion lights up
the whole earth, and
their kindness endures
forever.

Bulletin Board

Personnel Profiles
Staff "Moves/Changes":

Teresa Sneathen has been selected as the Lead Secretary for our Appeals Division.

Maryann Wright, a Legal Secretary in Trial Group B, moved to Appeals on January 03. Ω

for The Defense Index

Our newsletter's Index for Volumes 1 through 4 (1991-1994) has been attached to this month's newsletter. The Index is divided into two sections, Table of Authors and Index of Subjects, to assist our readers in locating desired articles by author or by content matter.

If any reader has a suggestion, addition or correction for the Index, please notify our Training Division. We would like to keep the Index as accurate and helpful as possible since many readers have told us that they keep the issues and use them as reference material. Thanks for your support!

Res Ipsa Loquitur
(The Thing Speaks for Itself)

The defense of criminal cases is serious business. However, there is no escaping the fact that it generates ironic and humorous anecdotes that are hard to ignore. Meaning no disrespect for anyone involved, this column is presented to share some of the lighter, or weirder, moments of life in the meat grinder we call criminal defense.

One of our attorneys finished a trial before Christmas. After the jury found his client guilty of possession of methamphetamine, the attorney went back to talk to the jurors. As he was about to leave, an older woman left the jury room, saying to her fellow jurors,

> *"Have a Merry Christmas, and everyone try to remember what this holiday is really about: the birth of our Lord. God bless you all."*

The attorney left, and ended up riding down the elevator with this sweet lady. As they rode down, she suddenly said to the attorney,

> *"You know what I think they should do to your client? They should put him in an unpadded cell, and give him nothing to eat. They should make him take those drugs until he goes crazy and beats his head against the wall and kills himself. Merry Christmas!"*

Editor's Note: If you have had an "interesting" experience in your practice or have heard of such an incident in our office that you would like to share, please submit it to Georgia Bohm, Training Division, for publication in our newsletter. Ω

Public Defender Office Training

Continuous improvement and continual training are critical to competence (delivery of quality representation to clients). Here's what's planned:

January 27 and 28: **DNA Training** in the Public Defender Training Facility, Suite 10, Luhrs Arcade. (Limited number of office attorneys to attend; requests to be submitted to Training Secretary Sherry Pape.)

February 03 : **"Immigration Collateral Consequences from Criminal Convictions,"** Deportation Defense Seminar, 1:00 to 5:30 p.m., ASU Downtown Center, Phoenix, AZ. Requests for attendance to be submitted to Training Secretary Sherry Pape.

March 01: **"ADA"** seminar for office attorneys and support staff. Maricopa Deputy County Attorney Shawn Nau to speak on ADA law and its application--how it affects Maricopa County and our clients. The afternoon seminar will be held in the Public Defender Training Facility. Requests for attendance to be submitted to Training Administrator Georgia Bohm.

March 10: **"Out of the Frying Pan: Hot Ethic Topics,"** presented by the Maricopa County Public Defender Office from 1:30 p.m. to 4:45 p.m. at the Maricopa County Board of Supervisors Auditorium. Faculty includes Gary L. Stuart (author of *The Ethical Trial Lawyer* and partner in Jennings, Strouss and Salmon), Robert Doyle and a distinguished panel on cutting-edge ethical issues. Moderator: Christopher Johns.

March 24: Annual DUI seminar featuring latest issues in DUI practice will be held at the Board of Supervisors Auditorium. Further details to be released soon.

Also Planned: Katherine James from Act of Communication may return for another session on courtroom presentation, and we're working on getting actor/instructor Joe Gustaferro for other training. We're also trying to arrange to have Cessie Alfonso, an expert on client relations, do a presentation here. Cessie has taught for numerous public defender organizations, including the NLADA Trial Advocacy Program. Additional sponsored and in-house training programs are also being developed.

In 1992 the American Bar Association formally decided two important national benchmarks for public defenders. First, public defenders should have training development and education for all defender staff. Second, the government, which has a constitutional duty to provide effective assistance of counsel for those it chooses to prosecute and who are too poor to hire their own lawyer, should fund this training. These two benchmarks are found in the ABA Standards for Criminal Justice, Chapter 5, *Providing Defense Services*, Standard 5-1.4.